

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

JAN 17 2012

CLERK, U.S. DISTRICT COURT

by _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

NOBLE LEE CLARK,

§

§

Petitioner,

§

§

v.

§

No. 4:12-CV-020-A

§

RICK THALER, Director,

§

Texas Department of Criminal

§

Justice, Correctional

§

Institutions Division,

§

§

Respondent.

§

MEMORANDUM OPINION

and

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Mack Webb, a state prisoner incarcerated in the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ), on behalf of petitioner, Noble Lee Clark, a state prisoner incarcerated in the Powledge Unit of TDCJ, against Rick Thaler, Director of TDCJ, respondent. After having considered the pleadings, state court records, and relief sought by petitioner, the court has concluded that the petition should be summarily dismissed as successive. No service has issued upon respondent.

I. FACTUAL AND PROCEDURAL HISTORY

Petitioner is serving a 25-year sentence on his March 31,

2009, conviction for possession of cocaine in the 396th District Court of Tarrant County, Texas. (Pet. at 2) Petitioner has previously sought both state and federal postconviction habeas relief challenging the same conviction. See *Clark v. Thaler*, No. 4:10-CV-784-A (denied on the merits). The court takes judicial notice of the pleadings and state court records filed in petitioner's prior federal habeas petition.

II. SUCCESSIVE PETITION

Title 28 U.S.C. § 2244(b) requires dismissal of a second or successive petition filed by, or on behalf of, a state prisoner under § 2254 unless specified conditions are met.¹ 28 U.S.C. § 2244(b)(1)-(2). A petition is successive when it raises a claim or claims challenging the petitioner's conviction or sentence that were or could have been raised in an earlier petition or otherwise constitutes an abuse of the writ. See *Crone v. Cockrell*, 324 F.3d 833, 837 (5th Cir. 2003); *In re Cain*, 137 F.3d

¹Petitioner asserts the previous federal habeas petition was filed by another prisoner without his consent, however petitioner executed a "Verification of Petition for Writ of Habeas Corpus" declaring the petition, which was unsigned, sent on his behalf was true and correct, he signed the memorandum in support of the petition and his reply to respondent's answer, and he submitted a notice of change of address and other correspondence. (Pet. at 4, 8) *Clark v. Thaler*, Civil Action No. 4:10-CV-784-A, docket entry nos. 2, 6, 14, 16.

234, 235 (5th Cir. 1998).

In the instant petition, petitioner raises four grounds, which were or could have been raised in his prior petition. (Pet. at 6-7) Because petitioner did or could have raised the claims in his prior federal petition, this petition is successive. Before a petitioner may file a successive § 2254 petition, he must obtain authorization from the appropriate court of appeals. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not demonstrated that he has obtained leave to file this petition from the Fifth Circuit Court of Appeals. Thus, this court is without jurisdiction to consider the petition. *In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997); *United States v. Orozco-Ramirez*, 211 F.3d 862, 867 (5th Cir. 2000).

For the reasons discussed herein,

The court ORDERS the petition of petitioner for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be, and is hereby, dismissed.

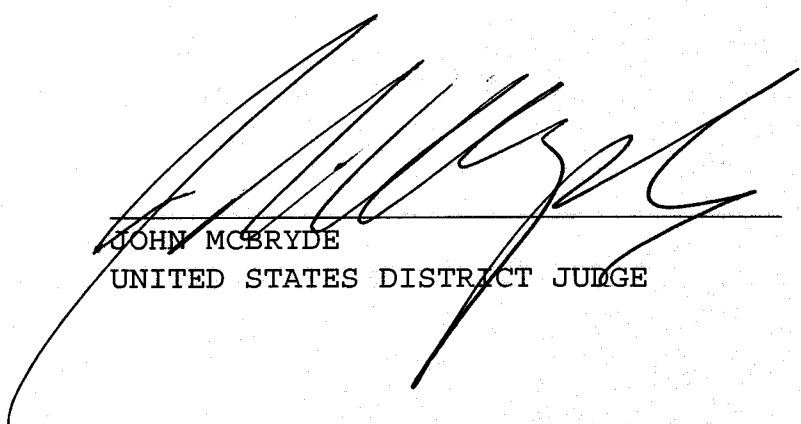
Pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Court, and 28 U.S.C. § 2253(c), for the reasons discussed herein, the court ORDERS that a certificate of appealability be, and is hereby, denied, as petitioner has not

made a substantial showing of the denial of a constitutional right.

The court, having reviewed petitioner's application to proceed *in forma pauperis*, ORDERS that the application be, and is hereby, denied. 28 U.S.C. § 1915(A)(1)-(2). The submitted application to proceed *in forma pauperis* provides insufficient information to determine whether *in forma pauperis* status is appropriate because petitioner did not submit a certificate of inmate trust account with the application.

The court further ORDERS the clerk of court to mail a copy of this memorandum opinion and order to both Mack Webb, TDCJ-ID #1537740, Polunsky Unit, 3872 FM 350 South, Livingston, Texas 77351, and petitioner, TDCJ-ID #1565381, Powledge Unit, Route 2 Box 2250, Palestine, Texas 75882.

SIGNED January 17, 2012.



JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE